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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

ClearPlay Inc.,

Plaintiff,

vs.

Dish Network LLC, Dish Network Corp.,
EchoStar Corp., and EchoStar Technologies
L.L.C.,

Defendants,

Case No.:

**COMPLAINT FOR PATENT
INFRINGEMENT**

Plaintiff ClearPlay, Inc. ("ClearPlay"), for its Complaint for Patent Infringement against Defendants Dish Network LLC, Dish Network Corp., EchoStar Corp., and EchoStar Technologies LLC (collectively, "Defendants"), alleges as follows:

1 **I. STATEMENT OF THE CASE**

2 1. In 2012, Dish Network introduced its Autohop technology, which allows
3 consumers to activate a filter that will skip commercials during playback of certain television
4 programs. EchoStar manufactures set-top digital video recorder boxes called Hoppers,
5 which are distributed to Dish Network subscribers. These Hoppers contain the Autohop
6 feature.

7 2. Since Dish Network introduced the Autohop feature, the Hopper DVR with
8 Autohop has been a central focus of Dish Network's marketing efforts and ads. For
9 example, www.dish.com touts the ability to "instantly skip commercials" and, under the
10 Hopper features, states:
11

12 Watch Commercial-Free TV

13 Hate commercials? DISH created commercial-free TV so you
14 can save an hour each night*! Now you can instantly skip
commercials in recorded primetime TV.

15 *Feature must be enabled by customer and is subject to*
16 *availability. Only available with playback of select shows.*

17 3. Dish Network's Hopper DVR with Autohop infringes on ClearPlay's patents.
18 Accordingly, ClearPlay is entitled to an injunction and damages for infringement.

19 **II. PARTIES, JURISDICTION, AND VENUE**

20 4. Plaintiff ClearPlay is a corporation incorporated under the laws of the State of
21 Delaware with its principal place of business in Utah.

22 5. Defendant Dish Network LLC ("Dish Network") is a limited liability company
23 organized and existing under the laws of the State of Colorado with its principal place of
24 business in Colorado.
25

1 6. Defendant Dish Network Corp. (“Dish Corp.”) is a corporation incorporated
2 under the laws of Nevada with its principal place of business in Colorado. On information
3 and belief, Dish Network is a wholly-owned subsidiary of Dish Corp.

4 7. Defendant EchoStar Technologies LLC (collectively with EchoStar Corp., the
5 “EchoStar Defendants”) is a limited liability company organized and existing under the laws
6 of the State of Texas with its principal place of business in Colorado.

7 8. Defendant EchoStar Corp. is a corporation incorporated under the laws of
8 Nevada with its principal place of business in Colorado. On information and belief,
9 EchoStar Technologies LLC is a wholly-owned subsidiary of EchoStar Corp.

10 9. This is an action for patent infringement arising under the patent laws of the
11 United States, Title 35, United States Code.

12 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 and
13 §1338(a).

14 11. Defendants are subject to personal jurisdiction in the District of Utah,
15 consistent with the principles of due process and the Utah long-arm statute, because
16 Defendants offer their products for sale in this District, have transacted business in this
17 District, have committed and/or induced acts of patent infringement in this District, and/or
18 induced acts of patent infringement in this District, and/or have placed infringing products
19 into the stream of commerce through established distribution channels with the expectation
20 that such products will be purchased by residents of this District.

21 12. Dish Network LLC is registered to do business in the State of Utah.
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1 13. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b), 1391(c),
2 1391(d), and 1400(b).

3 **III. FACTUAL BACKGROUND**

4 **A. ClearPlay's Technology.**

5 14. ClearPlay offers products which allow users to filter out certain content that
6 users deem undesirable.

7 15. ClearPlay is the owner of all right, title, and interest in U.S. Patent No.
8 6,898,799 (the "'799 Patent"), U.S. Patent No. 7,526,784 (the "'784 Patent"), U.S. Patent
9 No. 7,543,318 (the "'318 Patent"), U.S. Patent No. 7,577,970 (the "'970 Patent"), and U.S.
10 Patent No. 8,117,282 (the "'282 Patent") (collectively, the "ClearPlay Patents").

11 16. In September 2012, the '784 Patent and the '318 Patent were both challenged
12 by CustomPlay LLC (a subsidiary of Nissim Corp.) in an *inter partes* reexamination
13 proceeding. The U.S. Patent and Trademark Office ("PTO") examiner rejected both
14 reexamination requests, finding that "there is no reasonable likelihood that the Requester will
15 prevail with respect to at least one claim of the" patents.

16 17. In August 2013, CustomPlay LLC filed a petition for *inter partes* review of the
17 '790 Patent. The Patent Trial and Appeal Board of the PTO rejected the *inter partes* review
18 with respect to claims 1-15, 17-26, 29, 35-39, and 41-43 of the '790 Patent. Claims 16, 27,
19 28, 30-34, and 40 of the '970 Patent are still under review.
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1 **B. Dish Had Actual Knowledge of ClearPlay's Patents.**

2 18. In 2004, ClearPlay became involved in patent infringement litigation with
3 Nissim Corp. To handle that litigation, ClearPlay retained Dorsey Whitney LLP, including
4 then-partner John T. Kennedy.

5 19. According to his biography on the Dorsey Whitney website, Mr. Kennedy
6 acted as "Lead patent counsel for defendant [ClearPlay] in litigation regarding DVD content
7 filtering" in the *Nissim v. ClearPlay* litigation. Because he was defending ClearPlay against
8 accusations that it was infringing Nissim's patents, Mr. Kennedy had to be thoroughly
9 familiar with ClearPlay's technology.
10

11 20. Dorsey Whitney also represented ClearPlay in prosecuting the ClearPlay
12 Patents starting in approximately late 2004 through 2010.

13 21. In 2005, then-ClearPlay CEO Bill Aho communicated with EchoStar's Chief
14 Technology Officer, Nolan Daines. Mr. Aho told Mr. Daines about ClearPlay's technology
15 and offered him a demonstration of the technology. ClearPlay also sent Mr. Daines a
16 ClearPlay DVD Player.

17 22. In 2006, Mr. Kennedy left Dorsey Whitney and joined EchoStar Technologies
18 LLC as the Vice President of Intellectual Property and Dish Network as the Vice President
19 of Intellectual Property and Associate General Counsel. He remained at EchoStar and Dish
20 Network through March 2011.
21

22 23. In November 2007, Dish Network filed a patent application titled "Methods
23 and Apparatus for Generating Metadata Utilized to Filter Content From a Video Stream
24 Using Text Data." On March 13, 2012, that application issued as U.S. Patent No. 8,136,140.
25

1 24. In February 2013, ClearPlay CEO Matt Jarman communicated with Rex
2 Povenmire, the then-Vice President of Corporate Initiatives for Dish Network. At that time,
3 he shared the ClearPlay Patents with Mr. Povenmire, along with some information about
4 ClearPlay and research about the market demand for skipping objectionable content.

5 **C. Defendants Are Infringing The ClearPlay Patents.**

6 25. Defendants are infringing and/or inducing others to infringe the ClearPlay
7 Patents by making, using, offering to sell, and/or selling in the United States, and/or
8 importing into the United States, products or processes that practice one or more inventions
9 claimed in the ClearPlay Patents.
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11 26. Defendants have profited through infringement of and/or through inducing
12 others to infringe the ClearPlay Patents. As a result of Defendants' unlawful infringement of
13 the ClearPlay Patents, ClearPlay has suffered and will continue to suffer damage. ClearPlay
14 is entitled to recover from Defendants the damages suffered by ClearPlay as a result of
15 Defendants' unlawful acts.

16 27. Defendants' infringement of one or more of the ClearPlay Patents is willful
17 and deliberate, entitling ClearPlay to enhanced damages and reasonable attorney fees and
18 costs.
19

20 28. Defendants intend to continue their unlawful infringing activity, and ClearPlay
21 continues to and will continue to suffer irreparable harm – for which there is no adequate
22 remedy at law – from such unlawful infringing activity unless Defendants are enjoined by
23 this Court.
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COUNT I

INFRINGEMENT OF U.S. PATENT NO. 7,526,784

29. ClearPlay realleges and incorporates by reference the allegations set forth herein.

30. On April 28, 2009, United States Letters Patent No. 7,526,784 was issued to the Plaintiff for an invention titled "Delivery of navigation data for playback of audio and video content." The Plaintiff owned the patent throughout the period of the Defendants' infringing acts and still owns the patent. A copy of the '784 Patent is attached hereto as Exhibit A.

31. Defendants have been and are directly infringing the '784 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by claims in the '784 Patent, including, by way of example and not limitation, the Hopper DVR featuring the Autohop technology.

32. Therefore, the Plaintiff demands: (a) an injunction against the continuing infringement; (b) an accounting for damages; and (c) interest and costs.

33. Defendants have been and are willfully infringing the '784 Patent. Accordingly, Plaintiffs are entitled to attorney fees pursuant to 35 U.S.C. § 285.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 7,543,318

34. ClearPlay realleges and incorporates by reference the allegations set forth herein.

37. Therefore, the Plaintiff demands: (a) an injunction against the continuing infringement; (b) an accounting for damages; and (c) interest and costs.

COUNT III

39. ClearPlay realleges and incorporates by reference the allegations set forth herein.

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41. Defendants have been and are infringing the '799 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by claims of the '799 Patent, including, by way of example and not limitation, the Hopper DVR featuring Autohop technology.

42. Therefore, the Plaintiff demands: (a) an injunction against the continuing infringement; (b) an accounting for damages; and (c) interest and costs.

43. Defendants have been and are willfully infringing the '799 Patent. Accordingly, Plaintiffs are entitled to attorney fees pursuant to 35 U.S.C. § 285.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 7,577,970

44. ClearPlay realleges and incorporates by reference the allegations set forth herein.

45. On August 18, 2009, United States Letters Patent No. 7,577,970 was issued to the Plaintiff for an invention titled “Delivery of navigation data for playback of audio and video content.” The Plaintiff owned the patent throughout the period of the Defendants' infringing acts and still owns the patent. A copy of the '970 Patent is attached hereto as Exhibit D.

46. Defendants have been and are infringing the '970 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by claims of the '970 Patent,

1 including, by way of example and not limitation, the Hopper DVR featuring Autohop
2 technology.

3 47. Therefore, the Plaintiff demands: (a) an injunction against the continuing
4 infringement; (b) an accounting for damages; and (c) interest and costs.

5 48. Defendants have been and are willfully infringing the '970 Patent.
6 Accordingly, Plaintiffs are entitled to attorney fees pursuant to 35 U.S.C. § 285.

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8 **COUNT V**

9 **INFRINGEMENT OF U.S. PATENT NO. 8,117,282**

10 49. ClearPlay realleges and incorporates by reference the allegations set forth
11 herein.

12 50. On February 14, 2012, United States Letters Patent No. 8,117,282 was issued
13 to the Plaintiff for an invention titled "Media player configured to receive playback filters
14 from alternative storage mediums." The Plaintiff owned the patent throughout the period of
15 the Defendants' infringing acts and still owns the patent. A copy of the '282 Patent is
16 attached hereto as Exhibit E.

17 51. Defendants have been and are infringing the '282 Patent by, among other
18 things, making, using, offering to sell or selling in the United States, or importing into the
19 United States, products and/or services that are covered by claims of the '282 Patent,
20 including, by way of example and not limitation, the Hopper DVR featuring Autohop
21 technology.
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23 52. Therefore, the Plaintiff demands: (a) a and final injunction against the
24 continuing infringement; (b) an accounting for damages; and (c) interest and costs.
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53. Defendants have been and are willfully infringing the '282 Patent. Accordingly, Plaintiffs are entitled to attorney fees pursuant to 35 U.S.C. § 285.

COUNT VI

INDIRECT INFRINGEMENT OF U.S. PATENT NO. 7,526,784

54. ClearPlay realleges and incorporates by reference the allegations set forth herein.

55. Defendants knew about the ClearPlay patents, including the '784 Patent..

56. The Defendants are inducing infringement of the '784 Patent by licensing, selling, or distributing infringing devices and services to Dish Network subscribers.

57. The EchoStar Defendants are inducing infringement of the '784 Patent by manufacturing Hopper set-top boxes featuring the Autohop technology. On information and belief, the EchoStar Defendants either license or sell these set-top boxes to consumers or license and sell them to the Dish Network Defendants with the intention that they license or sell them to consumers.

58. The Dish Network Defendants market their satellite television services to subscribers, and offer subscription packets that include the Hopper with Autohop. Dish Network markets its services to potential subscribers by highlighting the Autohop technology, which gives subscribers the ability to skip commercials. By using the Autohop technology, Dish Network subscribers infringe one or more claims in the '784 Patent.

59. Defendants intended the end-users of the set-top boxes to infringe the '784 Patent by activating the Autohop feature, and they knew the subscribers' actions constituted infringement.

1 60. Defendants benefited directly from the infringement by attracting and retaining
2 subscribers and through increased demand for the Hopper with Autohop set-top boxes.

3 61. Therefore, the Plaintiff demands: (a) an injunction against the continuing
4 infringement by Defendants and by the Dish Network subscribers; (b) an accounting for
5 damages; and (c) interest and costs.

6 62. Defendants have been and are willfully inducing infringement of the '784
7 Patent. Accordingly, Plaintiffs are entitled to attorney fees pursuant to 35 U.S.C. § 285.

8
9 **COUNT VII**

10 **INDIRECT INFRINGEMENT OF U.S. PATENT NO. 7,543,318**

11 63. ClearPlay realleges and incorporates by reference the allegations set forth
12 herein.

13 64. Defendants knew about the ClearPlay patents, including the '318 Patent.

14 65. The Defendants are inducing infringement of the '318 Patent by licensing,
15 selling, or distributing infringing devices and services to Dish Network subscribers.

16 66. The EchoStar Defendants are inducing infringement of the '318 Patent by
17 manufacturing Hopper set-top boxes featuring the Autohop technology. On information and
18 belief, the EchoStar Defendants either license or sell these set-top boxes to consumers or
19 license and sell them to the Dish Network Defendants with the intention that they license or
20 sell them to consumers.

21 67. The Dish Network Defendants market their satellite television services to
22 subscribers, and offer subscription packets that include the Hopper with Autohop. Dish
23 Network markets its services to potential subscribers by highlighting the Autohop
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1 technology, which gives subscribers the ability to skip commercials. By using the Autohop
2 technology, Dish Network subscribers infringe one or more claims in the '318 Patent.

3 68. Defendants intended the end-users of the set-top boxes to infringe the '318
4 Patent by activating the Autohop feature, and they knew the subscribers' actions constituted
5 infringement.

6 69. Defendants benefited directly from the infringement by attracting and retaining
7 subscribers and through increased demand for the Hopper with Autohop set-top boxes.

8 70. Therefore, the Plaintiff demands: (a) an injunction against the continuing
9 infringement by Defendants and by the Dish Network subscribers; (b) an accounting for
10 damages; and (c) interest and costs.

11 71. Defendants have been and are willfully inducing infringement of the '318
12 Patent. Accordingly, Plaintiffs are entitled to attorney fees pursuant to 35 U.S.C. § 285.

13 **COUNT VIII**

14 **INDIRECT INFRINGEMENT OF U.S. PATENT NO. 6,898,799**

15 72. ClearPlay realleges and incorporates by reference the allegations set forth
16 herein.

17 73. Defendants knew about the ClearPlay patents, including the '799 Patent.

18 74. The Defendants are inducing infringement of the '799 Patent by licensing,
19 selling, or distributing infringing devices and services to Dish Network subscribers.

20 75. The EchoStar Defendants are inducing infringement of the '799 Patent by
21 manufacturing Hopper set-top boxes featuring the Autohop technology. On information and
22 belief, the EchoStar Defendants either license or sell these set-top boxes to consumers or
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1 license and sell them to the Dish Network Defendants with the intention that they license or
2 sell them to consumers.

3 76. The Dish Network Defendants market their satellite television services to
4 subscribers, and offer subscription packets that include the Hopper with Autohop. Dish
5 Network markets its services to potential subscribers by highlighting the Autohop
6 technology, which gives subscribers the ability to skip commercials. By using the Autohop
7 technology, Dish Network subscribers infringe one or more claims in the '799 Patent.
8

9 77. Defendants intended the end-users of the set-top boxes to infringe the '799
10 Patent by activating the Autohop feature, and they knew the subscribers' actions constituted
11 infringement.

12 78. Defendants benefited directly from the infringement by attracting and retaining
13 subscribers and through increased demand for the Hopper with Autohop set-top boxes.

14 79. Therefore, the Plaintiff demands: (a) an injunction against the continuing
15 infringement by Defendants and by the Dish Network subscribers; (b) an accounting for
16 damages; and (c) interest and costs.

17 80. Defendants have been and/or are willfully inducing infringement of the '799
18 Patent. Accordingly, Plaintiffs are entitled to attorney fees pursuant to 35 U.S.C. § 285.
19

20 **COUNT IX**

21 **INDIRECT INFRINGEMENT OF U.S. PATENT NO. 7,577,970**

22 81. ClearPlay realleges and incorporates by reference the allegations set forth
23 herein.

24 82. Defendants knew about the ClearPlay patents, including the '970 Patent.
25

1 83. The Defendants are inducing infringement of the '970 Patent by licensing,
2 selling, or distributing infringing devices and services to Dish Network subscribers.

3 84. The EchoStar Defendants are inducing infringement of the '970 Patent by
4 manufacturing Hopper set-top boxes featuring the Autohop technology. On information and
5 belief, the EchoStar Defendants either license or sell these set-top boxes to consumers or
6 license and sell them to the Dish Network Defendants with the intention that they license or
7 sell them to consumers.

8 85. The Dish Network Defendants market their satellite television services to
9 subscribers, and offer subscription packets that include the Hopper with Autohop. Dish
10 Network markets its services to potential subscribers by highlighting the Autohop
11 technology, which gives subscribers the ability to skip commercials. By using the Autohop
12 technology, Dish Network subscribers infringe one or more claims in the '970 Patent.

13 86. Defendants intended the end-users of the set-top boxes to infringe the '970
14 Patent by activating the Autohop feature, and they knew the subscribers' actions constituted
15 infringement.

16 87. Defendants benefited directly from the infringement by attracting and retaining
17 subscribers and through increased demand for the Hopper with Autohop set-top boxes.

18 88. Therefore, the Plaintiff demands: (a) an injunction against the continuing
19 infringement by Defendants and by the Dish Network subscribers; (b) an accounting for
20 damages; and (c) interest and costs.

21 89. Defendants have been and/or are willfully inducing infringement of the '970
22 Patent. Accordingly, Plaintiffs are entitled to attorney fees pursuant to 35 U.S.C. § 285.
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COUNT X

INDIRECT INFRINGEMENT OF U.S. PATENT NO. 8,117,282

90. ClearPlay realleges and incorporates by reference the allegations set forth herein.

91. Defendants knew about the ClearPlay patents, including the '282 Patent.

92. The Defendants are inducing infringement of the '282 Patent by licensing, selling, or distributing infringing devices and services to Dish Network subscribers.

93. The EchoStar Defendants are inducing infringement of the '282 Patent by manufacturing Hopper set-top boxes featuring the Autohop technology. On information and belief, the EchoStar Defendants either license or sell these set-top boxes to consumers or license and sell them to the Dish Network Defendants with the intention that they license or sell them to consumers.

94. The Dish Network Defendants market their satellite television services to subscribers, and offer subscription packets that include the Hopper with Autohop. Dish Network markets its services to potential subscribers by highlighting the Autohop technology, which gives subscribers the ability to skip commercials. By using the Autohop technology, Dish Network subscribers infringe one or more claims in the '282 Patent.

95. Defendants intended the end-users of the set-top boxes to infringe the '282 Patent by activating the Autohop feature, and they knew the subscribers' actions constituted infringement.

96. Defendants benefited directly from the infringement by attracting and retaining subscribers and through increased demand for the Hopper with Autohop set-top boxes.

1 97. Therefore, the Plaintiff demands: (a) an injunction against the continuing
2 infringement by Defendants and by the Dish Network subscribers; (b) an accounting for
3 damages; and (c) interest and costs.

4 98. Defendants have been and/or are willfully inducing infringement of the '282
5 Patent. Accordingly, Plaintiffs are entitled to attorney fees pursuant to 35 U.S.C. § 285.

6
7 **IV. DEMAND FOR JURY TRIAL**

8 99. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, ClearPlay
9 requests a trial by jury of all issues properly triable by jury.

10 **V. PRAYER FOR RELIEF**

11 WHEREFORE, ClearPlay prays for relief as follows:

12 A. For a judgment declaring that Defendants have infringed each of the ClearPlay
13 Patents;

14 B. For a judgment awarding ClearPlay compensatory damages as a result of
15 Defendants' infringement of the ClearPlay Patents, together with interest and costs, and in no
16 event less than a reasonable royalty;

17 C. For a judgment declaring that Defendants' infringement of ClearPlay Patents
18 has been willful and deliberate;

19 D. For a judgment awarding ClearPlay treble damages and pre-judgment interest
20 under 35 U.S.C. § 284 as a result of Defendants' willful and deliberate infringement of the
21 ClearPlay Patents;
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1 E. For a judgment finding that this case is exceptional and awarding ClearPlay its
2 expenses, costs, and attorneys fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule
3 54(d) of the Federal Rules of Civil Procedure;

4 F. For a permanent injunction pursuant to 35 U.S.C. § 283, enjoining the
5 Defendants from further acts of infringement; and

6 G. For such other and further relief as the Court deems just and proper.

7 DATED this 13th day of March 2014.

8
9 **BEUS GILBERT PLLC**

10
11 By 

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